No. 178

JUL 3 1950

CHARLES ELMORE CROPLE
CLER

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

The North Little Rock Transportation Company, Inc. ____ Petitioner

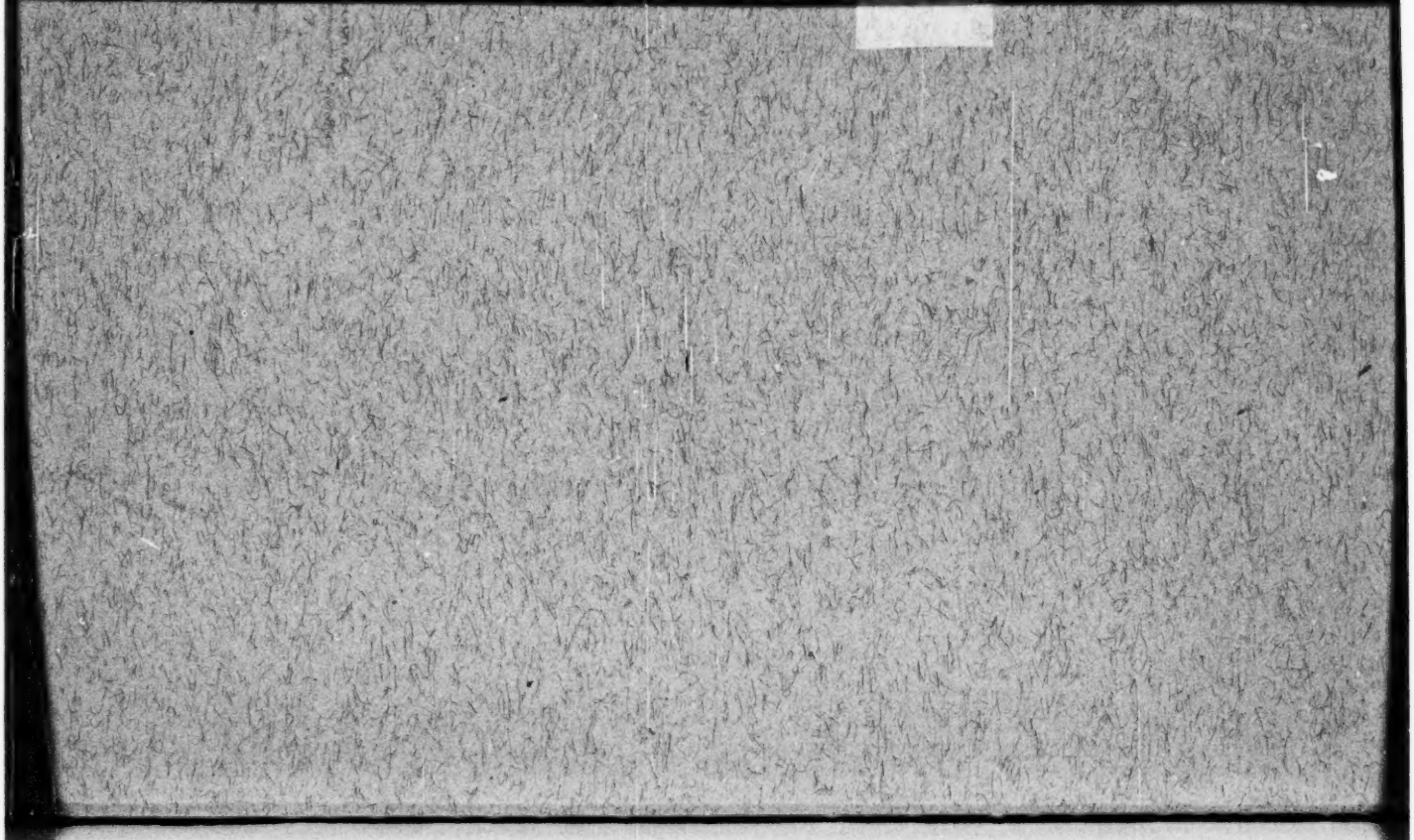
v.

Casualty Reciprocal Exchange, The Aetna Casualty and Surety Company, National Bureau of Casualty Underwriters, American General Insurance Company, American Guarantee and Liability Insurance Company, American Surety Company of New York, Arex Indemnity Company, Association Employers Lloyds, Bankers Indemnity Insurance Company, Carolina Casualty Insurance Company, The Century Indemnity Company, Columbia Casualty Company, Commercial Casualty Insurance Company, Commercial Standard Insurance Company, The Connecticut Indemnity Company, Eagle Indemnity Company, Employers Casualty Company, Factory Mutual Liability Insurance Company of America, The Fidelity and Casualty Company of New York, Fidelity and Deposit Company of Maryland, Firemen's Fund Indemnity Company, General Insurance Corporation, Glens Falls Indemnity Company, Globe Indemnity Company, Great American Indemnity Company, Hartford Accident and Indemnity Company, The Home Indemnity Company of New York, London Guarantee and Accident Company, Limited, Manufacturers and Merchants Indemnity Company, Maryland Casualty Company, Massachusetts Bonding and Insurance Company, The Metropolitan Casualty Insurance Company of New York, National Automobile and Casualty Insurance Company, National Surety Corporation, New Amsterdam Casualty Company, New York Casualty Company, The Ocean Accident and Guarantee Corporation, Limited, Pacific Employers Insurance Company, Phoenix Indemnity Company, Royal Indemnity Company, Service Casualty Company of New York, Standard Accident Insurance Company, Traders and General Insurance Company, The Travelers Indemnity Company, The Travelers Insurance Company, United National Indemnity Company, United States Casualty Company, United States Fidelity and Guaranty Company, Zurich General Accident and Liability Insurance Company, Limited, Consolidated Underwriters, Highway Insurance Underwriters ____ Respondents

PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND SUPPORTING BRIEF

A. F. House
Frederick U. Andres
William Nash
Counsel for Petitioner

PARAGON PRINTING CO., LITTLE ROCK



INDEX

	Page
Summary statement of the matter involved	1
Jurisdiction	3
Questions presented	4
Reasons relied upon for the allowance of the writ	5
Prayer in petition	6
Opinions of Courts below	7
Statement of case	7
Specification of errors	7
Argument:	
Summary of argument	8
Point A	9
Point B	10
Point C	12
Point D	14
Conclusion	15

LIST OF AUTHORITIES

Cases Cited

Belknap *v.* U. S., 150 U. S. 588	11
Dunwoody *v.* U. S., 143 U. S. 578	11
Hooper *v.* California, 155 U. S. 648	9
Knickerbocker Ice Co. *v.* Stewart, 253 U. S. 149	13
Levy *v.* Stockslager, 129 U. S. 470	12
Matthews *v.* U. S., 123 U. S. 182	11

190230

Page

New York Life Insurance Co. *v.* Deer Lodge County, 231 U. S. 495 9

Paul *v.* Virginia, 8 Wall. (75 U. S.) 168 9

Prudential Insurance Co. *v.* Benjamin, 328 U. S. 408 9

Robertson *v.* California, 328 U. S. 440 9

Southern Pacific Co. *v.* Jensen, 244 U. S. 205 13

United States *v.* Dickerson, 310 U. S. 554 11

United States *v.* Langston, 118 U. S. 389 11

United States *v.* Mitchell, 109 U. S. 146 10

United States *v.* South-Eastern Underwriters Association, 322 U. S. 533 9

United States *v.* Vulte, 233 U. S. 509 11

Washington *v.* Dawson & Co., 264 U. S. 219 13

Federal Statutes

McCarran Act, 15 U.S.C. 1011-1015; 59 Stat. 33, 34; P. L. 15, 79th Cong., 1st Sess., c. 20, Secs. 1-5 as amended, P. L. 238, 80th Cong., 1st Sess., c. 326 3

Sherman Act, 15 U.S.C. 1; c. 647, Sec. 1, 26 Stat. 209 1

State Statutes

Ark. Constit., Art. 2, Sec. 19 4

Act 116, Ark. Laws, 1947 (Secs. 66-417—66-433, Ark. Stat., 1947) 3

Ark. Stat. (1947), Secs. 66-203 4

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

THE NORTH LITTLE ROCK TRANSPORTATION COMPANY, INC. ..... *Petitioner*

v. No. .....

CASUALTY RECIPROCAL EXCHANGE, ET AL ..... *Respondents*

PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

To the Honorable the Supreme Court
of the United States:

Your petitioner respectfully shows:

I

SUMMARY STATEMENT OF THE MATTER INVOLVED

This is an action for treble damages and injunctive relief based upon an alleged violation of Section 1 of the Sherman Act (R.1-8).

The premiums for casualty insurance charged petitioner, a taxicab company operating in the area of Little

Rock, Arkansas, were fixed by respondent, National Bureau of Casualty Underwriters (R.43). In fixing these premiums, petitioner was not consulted (R.40). These premiums were mandatory upon all of its members (R. 170, 155) and subscribers (R.173, 155), among whom are the forty-nine casualty insurance company respondents, except Casualty Reciprocal Exchange (R.4, 8, 15). These respondents control more than sixty-six per cent of all automobile liability insurance written in the State of Arkansas by stock companies and more than fifty-six per cent written by insurance companies of all kinds (R.155-159, 155). If petitioner had secured its insurance from any material fact, that they were entitled to a judgment (R.153). This is true for any other taxicab company in the State of Arkansas (R.45). All casualty stock insurance companies doing business in Arkansas are eligible for membership in the National Bureau of Casualty Underwriters (R.152).

Petitioner filed suit on August 17, 1948 (R.1), and, before joinder of issue, took depositions (R.26-149). Respondents filed their answers on January 10, 1949, and January 15, 1949 (R.8, 15), and on February 11, 1949, the Insurance Commissioner of Arkansas intervened to support respondents (R.24). Thereafter, the parties stipulated as to the facts (R.155-216).

Respondents filed motions for summary judgment (R. 217-218) alleging that there was no genuine issue as to any material facts, that they were entitled to a judgment as a matter of law, and that their acts complained of were regulated by the laws of Arkansas, were in accordance with the laws of Arkansas and the United States, and had not violated the Sherman Act.

On September 8, 1949, the Court sustained the motions for summary judgment on the ground that the Sherman Act was validly suspended by the McCarran Act, that the acts of respondents were validly regulated by Act No. 116 of the Acts of Arkansas for 1947 and that the Sherman Act was not violated by acts authorized by State statute (R.228, 220-227).

Petitioner appealed to the United States Court of Appeals for the Eighth Circuit which affirmed the judgment of the Court below.

II

JURISDICTION

1. The statutory provision which is believed to sustain the jurisdiction of this Court is Title 28 USCA Sec. 1254 (a).

2. The validity of the McCarran Act is involved. This Act, approved March 9, 1945, makes the business of insurance subject to the laws of the several states which relate to the regulation or taxation of such business and suspends until January 1, 1948, the applicability of the Sherman and Clayton Acts to the business of insurance. Also involved is the validity of Act No. 116 of the Acts of Arkansas of 1947 which authorizes and regulates cooperative action among insurers in rate fixing and related matters.

3. The date of the judgment to be reviewed is April 5, 1950. This petition has been filed within the time provided under Title 28 USCA, Sec. 2101 (c).

III

QUESTIONS PRESENTED

1. Whether Congress may, except under the war powers, suspend a general law for a period of time as the McCarran Act purports to suspend the Sherman and Clayton Acts.

2. Whether Congress may delegate to individual States power to legislate in the regulation of the insurance business transactions within the commerce clause of the federal Constitution with reference to which Congress has already acted, which is the intent and effect of the McCarran Act.

3. Whether, in the event the McCarran Act is valid, Act No. 116 of the Acts of Arkansas of 1947 is proper regulation within the McCarran Act.

4. Whether Act No. 116 of the Acts of Arkansas of 1947 violates Article 2 Sec. 19 of the Constitution of the State of Arkansas as follows:

> "Section 19. *Perpetuities and monopolies*—Perpetuities and monopolies are contrary to the genius of a republic, and shall not be allowed; nor shall any hereditary emoluments, privileges or honors ever be granted or conferred in this State."

and whether said Act No. 116 is contrary to the anti-trust laws of the State of Arkansas as follows:

> Section 66-203, Arkansas Statutes 1947—"*Anti-trust regulations*—Any foreign or domestic insurance corporation is hereby permitted to do business in this State without fine or forfeiture, upon compliance with the insurance laws of this State; provided, that such corporation is not a member of or

a party to any pool, trust, agreement, combination, confederation, or understanding made in this State or elsewhere, to regulate, fix or maintain insurance premiums or property in this State. (Act Apr. 17, 1907, No. 184, Section 1, p. 430; C. & M. Dig., Sections 5976, 7369; Pope's Digest, Sections 7663, 9408.)"

5. Whether the conduct of respondents violates the Sherman Act.

IV

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT

1. The decision of the United States Circuit Court of Appeals for the Eighth Circuit that the McCarran Act validly suspends the Sherman and Clayton Acts involves important questions of federal law which have not been, but should be, settled by this Court.

2. The decision of the Circuit Court of Appeals that the McCarran Act validly subjects the business of insurance to state regulation is a decision of a federal question in a way probably in conflict with applicable decisions of this Court.

3. Whether the McCarran Act is valid is of great importance to the business world generally and in particular to the casualty insurance business which is nationwide in its scope and affects every person and every business. In the uncertainty and doubt which must exist until this Court has decided the point, there is imperative need of an authoritative and elucidating decision.

Wherefore, your petitioner respectfully prays that a writ of certiorari issue under the seal of this Court directed to the United States Court of Appeals for the Eighth Circuit, commanding that Court to certify and send to this Court a full and complete transcript of the record and all proceedings of the said Court of Appeals for the Eighth Circuit had in the case numbered and entitled on its docket No. 14,061, *The North Little Rock Transportation Company, Inc., Appellant,* v. *Casualty Reciprocal Exchange, et al, Appellees,* to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the judgment herein of said Court of Appeals for the Eighth Circuit be reversed by the Court and for such further relief as to this Court may seem proper.

Respectfully submitted

A. F. House

Frederick U. Andres

William Nash

Counsel for Petitioner

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

THE NORTH LITTLE ROCK TRANSPORTATION COMPANY, INC. ..... *Petitioner*

v. No. .....

CASUALTY RECIPROCAL EXCHANGE, ET AL ..... *Respondents*

SUPPORTING BRIEF

I

OPINIONS OF COURTS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is reported in 181 F. (2d) 174. The opinion of the United States District Court for the Eastern District of Arkansas, Western Division (R.220-227) is reported in 85 F. Supp. 961.

II

STATEMENT OF CASE

We adopt the statement of the case as set forth in the preceding petition and do not here restate it.

III

SPECIFICATION OF ERRORS

1. The Court of Appeals for the Eighth Circuit erred in holding that the McCarran Act was a valid suspension of the Sherman and Clayton Acts.

2. The said Court erred in holding that the McCarran Act was a valid delegation to the individual states of power

to regulate transactions within the commerce clause of the federal Constitution with reference to which Congress has already acted.

3. In the event the McCarran Act were valid, the said Court erred in holding that Act No. 116 of the Acts of the State of Arkansas of 1947 is proper regulation within the McCarran Act.

4. The said Court erred in holding said Act No. 116 of the Acts of Arkansas of 1947 valid under the Constitution of the State of Arkansas.

5. The said Court erred in holding that said Act No. 116 of the Acts of Arkansas of 1947 repealed Sections 66-203, Arkansas Statutes, 1947.

6. The said Court erred in holding that the acts of the respondents were not in violation of the Sherman Act.

IV

ARGUMENT

Summary of Argument

Point A: The decision of the Court of Appeals for the Eighth Circuit involves the important question of federal law whether the McCarran Act is valid when that question, under facts as presented in this case, has not been, but should be, settled by this Court.

Point B: The decision of the said Court involves the important question of federal law whether Congress may suspend a general law when that question has not been, but should be, settled by this Court.

Point C: The decision of the Court of Appeals for the Eighth Circuit decides that Congress may delegate

to individual states power to regulate transactions within the commerce clause of the federal Constitution with reference to which Congress has already acted and is probably in conflict with applicable decisions of this Court.

Point D: Whether the McCarran Act is valid is of great importance to the business world generally and in particular to the casualty insurance business, and this Court should remove the existing uncertainty and doubt.

Point A

This Court has not, under facts as presented in this case, passed upon the validity of the McCarran Act.

The McCarran Act has been before this Court in two cases: *Prudential Insurance Company* v. *Benjamin,* 328 U. S. 408, and *Robertson* v. *California,* 328 U. S. 440.

In the *Prudential* case, the Court held valid a tax statute of South Carolina passed before the decision of this Court in *United States* v. *South-Eastern Underwriters Association, et al,* 322 U. S. 533. The facts presented in the *Prudential* case were the same as those in *Paul* v. *Virginia,* 8 Wall. 168; *Hooper* v. *California,* 155 U. S. 648; and *New York Life Insurance Company* v. *Deer Lodge County,* 231 U. S. 495, each of which involved a state tax statute only, and in each of which the Court held that, under specific facts presented, transactions of insurance were not interstate commerce. In the *S. E. U. A.* case the Court, in holding for the first time that a fire insurance company which conducts a substantial part of its business transactions across state lines is engaged in commerce among the several states and is subject to regulations under the commerce clause, was careful to hold that the S. E. U. A. case did not overrule the *Paul,*

Hooper and *Deer Lodge* cases, and upon their particular facts the decisions were undisturbed.

Therefore, in the *Prudential* case, the Court would have followed the *Paul, Hooper* and *Deer Lodge* cases under the holding in the *S. E. U. A.* case, and the decision in the *Prudential* case would have been the same in the absence of the McCarran Act. A consideration of the McCarran Act was unnecessary to the decision, and the validity of the Act was not involved.

Moreover, this case involves regulation, not taxation, of insurance companies.

In the *Robertson* case, the Court passed upon an alleged criminal violation which occurred before the passage of the McCarran Act, so that necessarily the validity of the Act was not involved.

It remains that this Court has not, under facts as presented in this case, passed upon the validity of the McCarran Act.

Point B

This Court has not, except in a limited line of conflicting decisions, ever held that Congress may suspend a general law other than under war powers, which are not here involved.

The only language ever used by the Court to suggest that Congress has power to suspend a general law has been in cases on appropriation statutes, and in most of these cases it is clear that, in effect, Congress repealed, rather than suspended.

The first case seems to be *United States* v. *Mitchell*, 109 U. S. 146. Section 2070 of the Revised Statutes fixed

certain salaries at $500 a year. Subsequent statutes appropriated only $300, and finally Section 2070 was specifically repealed. Mitchell sued for the difference in salary. The Court said that the appropriation act "suspends" the law, but the Court also said that the intention of Congress to fix the salaries at $300 each was plain upon the statutes. The subsequent appropriation statute actually repealed, rather than suspended, Section 2070.

Similar facts are present in *Matthews* v. *United States,* 123 U. S. 182, *Dunwoody* v. *United States,* 143 U. S. 578; *Belknap* v. *United States,* 150 U. S. 588, and *United States* v. *Dickerson,* 310 U. S. 554. In all of these cases, it is clear from the actual holding of the Court that the appropriation statutes were treated as repealing a former statute.

United States v. *Vulte,* 233 U. S. 509, may afford a genuine instance in which Congress suspended a statute, for it appears that a 1902 statute was suspended by appropriation statutes in 1906 and 1907 and was restored by statute of 1908. If this is an exception, it will be noted that the suspending statutes did not provide for automatic restoration at a given time.

In the leading case of *United States* v. *Langston,* 118 U. S. 389, the Court arrived at a different conclusion. Revised Statutes, Section 1683, created certain positions and provided salaries therefor. In a subsequent appropriation act, Congress appropriated less money than was specified in Section 1683. Langston was held entitled to the difference, the Court holding that Congress could not suspend Section 1683 by an appropriation statute.

The *Langston* case, holding that Congress could not suspend a statute, was affirmed specifically in every subsequent case, including the *Matthews, Dunwoody, Belknap* and *Dickerson* cases, and even in the *Vulte* case, all of them based upon appropriation statutes.

The only other case on this power to suspend is *Levy* v. *Stockslager,* 129 U. S. 470, which also involved a type of appropriation act, and in which it was found that Congress actually repealed, rather than suspended.

There seem to be no other cases in which this Court has had before it the question whether Congress may suspend a general act for a limited time. In contrast to these conflicting decisions, all based upon appropriation statutes, in this case there is presented to the Court the important question of federal law whether Congress actually has power to suspend a general law, and this question should be settled now by this Court.

If it should be urged that the question has been settled by these cases on appropriation statutes, then the decision of the Court of Appeals for the Eighth Circuit is a decision of a federal question probably in conflict with the *Langston* case, which has been affirmed by this Court in every subsequent case, and for that reason the Court is requested to grant the writ of certiorari as prayed.

Point C

The decision of the Court of Appeals for the Eighth Circuit that Congress may delegate to individual states the power to regulate transactions within the commerce clause, with reference to which Congress has already acted,

is probably in conflict with applicable decisions of this Court.

Congress attempted, by amendment to Clause 3 of Section 24, and to Clause 3 of Section 256 of the Judicial Code, to delegate to the states the power to provide Workmen's Compensation in admiralty and maritime matters, with reference to which Congress had already acted by giving to federal courts the exclusive jurisdiction of admiralty and maritime causes. This Court held in *Knickerbocker Ice Company* v. *Stewart*, 253 U. S. 149, that Congress cannot transfer its legislative power to the states, that by nature this power is non-delegable, and cited numerous cases to sustain its position.

After the *Knickerbocker* case, Congress tried again by amendment to the Judicial Code to delegate to the states the power to provide Workmen's Compensation in admiralty and maritime matters, but this Court held again in *Washington* v. *Dawson & Co.*, 264 U. S. 219, that while Congress had power to alter, amend, or revise the maritime law by statutes of general application, it could not delegate that power to the several states.

Maritime law and interstate commerce law are not mutually exclusive, for this Court has borrowed from decisions in interstate commerce to support its holdings in maritime cases, as in *Southern Pacific Company* v. *Jensen*, 244 U. S. 205.

The decision here to be reviewed appears to be in conflict with the *Knickerbocker* and *Washington* cases, and the conflict should be settled.

Point D

Whether the McCarran Act is valid is of great importance to the business world generally and in particular to the casualty insurance business, and this Court should remove the existing uncertainty and doubt.

This Court has fully recognized, in the *S. E. U. A.* case, the importance and vast ramifications of the insurance business, and it is unnecessary to elaborate on it here. The two cases to reach this Court, as an aftermath of the *S. E. U. A.* case, the *Prudential* case and the *Robertson* case, do not pass upon the validity of the McCarran Act under facts here presented, and until the validity of the Act is squarely presented to this Court in a proper case there must be uncertainty and doubt.

Act No. 116 of the Acts of Arkansas of 1947, to regulate premium fixing and related matters, was passed during the moratorium provided by the McCarran Act, and virtually all of the states enacted or revised general regulatory laws concerning the business of casualty insurance (R.11). The United States District Court held in the first instance in this case that, except for the McCarran Act, the rate fixing activities of the respondents would constitute a violation of the Sherman Act (R.226). Doubtless, except for the McCarran Act, and, notwithstanding the regulatory legislation in the several states, the premium fixing activities of the insurance companies would fall under the Sherman Act. Only this Court can say with finality whether the McCarran Act is valid.

In the uncertainty and doubt which must exist until the Court has decided the point, there is imperative need of an authoritative and elucidating decision.

CONCLUSION

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, by granting a writ of certiorari and thereafter reviewing and reversing said decision.

A. F. House

Frederick U. Andres

William Nash

Counsel for Petitioner